

RHODE ISLAND BAR ASSOCIATION

**Policy on Responding to Unfair Criticism That Jeopardizes  
the Independence of the Judiciary and the  
Administration of Justice**

**PRELIMINARY STATEMENT**

The Bar Association recognizes the importance of a free and open exchange of ideas, opinions, public discourse and at times even criticism of our legal system and those who are part of it. At the same time, the Bar has an obligation to uphold the image of the legal profession and the judiciary in the eyes of the public and to speak out against unwarranted and unfair criticism of the judiciary, the legal system and the Bar. In order to strike a proper balance between these competing interests, the Bar Association has established a policy on when and how to respond to unfair criticism that jeopardizes the independence of the judiciary and the administration of justice.

**A. Purpose and Functions of Program**

The primary purposes and functions of the program are:

- (a) to deal with errors in reporting and with inaccurate or unjust criticism of judges, courts, the bar and/or the administration of justice, as further provided in this policy statement;
- (b) to be available to the news media as a resource for obtaining information concerning judicial activities, court process, or other technical or legal information about the administration of justice;
- (c) to encourage broad dissemination of information to the public about noteworthy achievements and improvements within the legal system;

- (d) to suggest means by which judges and lawyers can improve the public image of the legal system; and
- (e) to generally seek a better understanding within the community of the legal system and the role of lawyers and judges.

**B. Referral Procedure**

1. The Executive Director shall administer the program.
2. All referrals of criticism of judges, courts and the bar should be forwarded to the President and Executive Director at the Bar Association headquarters. The referral may be oral or written, but in all cases the referring person must be available to assist in gathering background and factual information and must present written material when requested. The courts should designate a liaison person, preferably the court communications officer, to work with the Bar Association in gathering necessary information for the Bar Association to evaluate whether a response to a criticism directed against a judge or the courts is warranted.
3. The Bar Association staff shall immediately begin to gather all pertinent background and factual information including a copy of the text (whether in live or print media) of the criticism.
4. The Bar Association staff shall immediately notify the Rhode Island Bar Association President.
5. The President, or his or her designee, should promptly investigate and review the underlying facts, determine whether a response is warranted, and if so, promptly prepare and release the response.

**C. Guidelines to Determine When the Bar Should Respond**

1. What follows are the kinds of cases for which a response to unfair criticism is usually appropriate:
  - (a) When the unfair criticism is serious and will most likely have more than a passing or *de minimis* negative effect in the community;
  - (b) When the unfair criticism shows a lack of understanding of the legal system, the role of the bar and/or the role of the judge and is based at least partially on such misunderstanding; and
  - (c) When the unfair criticism is materially inaccurate, and where the inaccuracy is a substantial part of the criticism, so that the response does not appear to be formalistic or “nitpicking;”
  
2. The following factors should be considered in determining whether a response should be made in a close case, and should be considered in every case in determining the appropriate type of response:
  - (a) Whether a response would serve a valuable public information purpose;
  - (b) Whether the criticism substantially and negatively affects the judiciary, the bar or other parts of the legal system;
  - (c) Whether the criticism is directed at a particular judge, but unjustly reflects upon the judiciary generally, the courts, or another aspect of the judicial system (e.g., grand jury, lawyers, probation, bail, etc.);

- (d) Whether a response would provide the opportunity to inform the public about an important aspect of the administration of justice (e.g., sentencing, bail, evidence rules, fundamental rights, etc.);
  - (e) Whether a response would appear to be solely defensive or self-serving;
  - (f) Whether the critic is so obviously uninformed about the judicial system that a response can and should be made on a factual basis;
  - (g) Whether the criticism or report, although generally accurate, does not contain all or enough of the facts of the event or procedure reported to be fair to the judge, court, bar or matter being criticized;
  - (h) Whether overall the criticism is not justified or fair;
  - (i) Whether the criticism, while not appearing in the local press, pertains to a local matter;
  - (j) Whether the timing of the response is especially important and precludes consideration by the Executive Committee.
3. What follows are those kinds of cases for which a response to criticism *is not* appropriate, except in unusual circumstances:
- (a) When the criticism is a fair comment or opinion;
  - (b) When the feud is between the critic and the judge on a personal level;
  - (c) When the criticism is vague or the product of innuendo, except when the innuendo is clear;

- (d) When there is a likelihood that a complaint against the judge will be presented to an appropriate disciplinary body.
- (e) When a lengthy investigation to develop the true facts would be necessary;
- (f) When the response would prejudice a matter at issue in a pending proceeding;
- (g) When the controversy is insignificant.

**D. The Response**

1. Timing. To be effective, the response must be prompt and accurate. If at all possible, the response should be made within 24-48 hours of publication of the criticism or report, especially keeping in mind the deadline(s) of the news media that reported the original criticism.
2. Form of Response. A letter to the editor is generally the best form of response, because it is the most likely to be printed fully and accurately. Press releases are usually more subject to editing and are frequently viewed as less credible. Pamphlets are too time-consuming and elaborate. Television or radio talk shows are more likely to inflame rather than resolve controversy, and, accordingly, such an outlet should be used with caution and only in the appropriate case that would appear to justify such a media response. For example, if a television or radio news report contains an unfair criticism, it may be appropriate to respond in the same media outlet, but only if the opportunity exists and the facts and circumstances warrant such a response.

3. Drafting Considerations.

- (a) The response should be concise, accurate, and “to the point,” devoid of emotional, inflammatory or subjective language;
- (b) The statement should be informative and not argumentative or condescending;
- (c) The statement should include a correction of any inaccuracies, citing facts and relevant authorities where appropriate;
- (d) The statement should be written in lay terms suitable for inclusion in a newspaper story;
- (e) Where appropriate, the statement should include an explanation of the judge’s role and constraints on decision-making (e.g., the decision was required by state law);
- (f) Where appropriate, the statement should include an explanation of the process involved (e.g., sentencing, bail, temporary restraining order);
- (g) The statement should explain why the particular criticism or attack is unjust, giving specific reasons.

*Note:* The Bar should avoid taking a position of the merits of the controversy, because to do so would probably eliminate any educational benefit the balance of the points made might have for those who agree with the criticism. Accordingly, in such cases it may be best to omit a detailed discussion of why the particular

criticism is unjust. This should be decided on a case-by-case basis.

- (h) The need for independent judges, who will not be influenced by unjustified criticism of them or their decisions, requires that the organized bar remind both lawyers and the public of these facts.
- (i) The law has established appellate courts so that decisions of judges may be reviewed and corrected where necessary. Our present judicial system provides for change in the law through legislative action or by constitutional revision.